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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,424	08/05/2003	Yoshimi Tsujiyama	JCLA11962	7330
23900	7590	02/12/2007	EXAMINER	
J C PATENTS, INC. 4 VENTURE, SUITE 250 IRVINE, CA 92618			TORRES VELAZQUEZ, NORCA LIZ	
			ART UNIT	PAPER NUMBER
			1771	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/12/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/635,424

**Applicant(s)**

TSUJIYAMA ET AL.

**Examiner**

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-7 and 11-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-7 and 11-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicants have amended independent claims 1 and 11 to now include the limitation reciting that both fibers are mixed together to form one layer of nonwoven fabric. New Claim 14 is introduced in the application. The Examiner finds no new matter in the amendment.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 3-7 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over SISON (US 4,107,364) in view of COLLIER IV (US 5,260,126).

SISON discloses a cloth structure comprising at least two types of organic polymer fibers, at least one of which is elastomeric and at least one of which is elongatable but non-elastic. Each of the non-elastic and elastomeric fibers comprises separately melt spun textile denier filaments. The elastomeric filaments comprise approximately 10-90%, by weight, of the cloth. The reference further teaches that the elastomeric fiber comprises polyurethane. (Refer to Abstract; Claims 1-2, 4, 22, 29-31) The reference teaches that at least two separate streams of monofilaments of one or more fiber forming synthetic organic polymers are melt spun through one or more preferably linear dies or spinnerettes from one or more extruders. (Col. 6, lines 42-47) The reference further teaches that additional layers may be incorporated into the cloth. (Col. 14, lines 39-42) Example I of the reference teaches a nonwoven elastic cloth made of polyester filaments of 3.6 denier and polyester type polyurethane polymer fiber forming elastomer

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filaments of 5.4 denier. (Refer to Col. 15, lines 43-46; Col. 16, line 48; Col. 17, lines 3, 18) As stated below, the prior art of would meet the preferred diameter values disclosed in the present invention and ranges that fall about the claimed ratio values would be obvious.

The Examiner further provides COLLIER IV to provide motivation for the use of micron level diameters in elastic nonwoven webs of fibers.

COLLIER, IV et al. discloses elastic nonwoven webs of fibers. The reference teaches materials suitable for use in applications such as disposable garments. (Col. 1, lines 24-26) The reference teaches that the elastic nonwoven web of fibers may be a web of meltblown fibers or spunbonded fibers. The elastic nonwoven web may also include at least one type of nonelastic fibers, for example nonelastic microfibers, which are distributed within or upon the matrix. If nonelastic fibers are present in the elastic nonwoven web, the elastic nonwoven web may generally include from about 20 percent, by weight, to about 99 percent, by weight, of fibers formed from a styrene-poly (ethylene propylene)-styrene blend and from about 1 percent, by weight to 80 percent, by weight, of the nonelastic fibers. (Col. 5, lines 1-37) On Table 1 of the reference, some physical properties of the styrene-poly(ethylenepropylene)-styrene block copolymer used by the reference are disclosed. (Col. 7) With regards to the average diameter of the fibers and the relation of diameters between the elastomeric and nonelastomeric fibers, it is the Examiner's interpretation that the teaching of using micro fibers (of diameters of about 100 microns or less, for example, 0.5-50 microns) reads on the values claimed herein. (Refer to col. 2, lines 28-33)

Although SISON does not explicitly teach the claimed properties of elongation recovery rate or separation resistance it is reasonable to presume that these properties are inherent to the

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cloth structure of SISSON. Support for said presumption is found in the use of like materials (i.e. a homogeneous blend of continuous elastomeric filaments and non-elastomeric filaments produced by melt-spun). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of properties of elongation recovery rate or separation resistance would obviously have been present one the SISSON product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

Since both references are directed to elastic webs, the purpose disclosed by COLLIER IV would have been recognized in the pertinent art of SISSON.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the diameter of the fiber to be within the microfiber diameter range (under 100 microns) with the motivation of providing a material suitable for the construction of disposable garments as disclosed by COLLIER IV (Col. 1, lines 11-25)

#### ***Response to Arguments***

4. Applicant's arguments filed 11/22/2006 have been fully considered but they are not persuasive.

a. With regards to arguments on the claimed limitation (feature 1 of Applicant's arguments), *the long elastomeric fiber and the long nonelastomeric fiber are mixed together to form one layer of nonwoven fabric*, it is noted that the primary reference to SISSON '364 explicitly discloses that "the elastomeric and non-elastic filaments may be mixed in a generally homogeneous layer" forming cloth 20 of their invention. (Refer to Col. 14, lines 35-37, lines 59-63)

b. With regards to arguments regarding the claimed *inequality of* " $Bd/Ad \geq 25/18$ ", it is noted that Applicants have provided values from US 6,048,379 to show that the prior art of record cited by the Examiner will not provide the claimed range. It is the Examiner's position, that assuming that the values exemplified by Applicants in their arguments correspond to the materials of the prior art of record, still the Examiner would consider that the values taught by the prior art meet the preferred disclosed diameters of the present invention. A small deviation from the claimed range would not have a major effect on the argued anti-blocking issue.

c. With regards to arguments on "feature 3", as previously noted, SISSON teaches the use of a spunbonding method. (Refer to Col. 7, lines 1-18) Therefore the primary reference meets the claimed limitation that requires the fibers being manufactured by a spunbond method. It is noted that the Examiner has relied on the Collier reference to show motivation for the use of fibers with micron level diameters since the primary reference of SISSON, while describing the denier of the fibers, is silent to the diameter of them. The Examiner is not bodily incorporating the invention of COLLIER into SISSON, but it is noted that both reference are analogous and while they might use different apparatuses in the production of their materials, they both relate to elastic webs and SISSON already meets claimed "feature 3".

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Norca L. Torres-Velazquez  
Primary Examiner  
Art Unit 1771

2/5/07

February 5, 2007